

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.**

J U D G M E N T

Mool Chand & Anr. vs. Birdhi Chand & Others.

S.B.Civil First Appeal No.108/1989
under Section 96 C.P.C. against the
judgment and decree dated 10.8.1989
passed by Shri Prabhu Dayal Sharma RHJS,
Additional District Judge, Baran in
Civil Suit No.19/1982.

Date of Judgment ::::: July 25, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.B.L.Mandhana for appellants.
None appeared for the respondents.

BY THE COURT (ORAL):-

The facts leading to this appeal in brief, are that
the plaintiff appellants who are son and mother filed a
suit against the vendor defendant respondent No.1, step

brother of plaintiff Mool Chand and vendee defendant respondents No.2 and 3 for cancellation of sale deed dated 2.6.1982 of the H.U.F. property, the details of the same were given in the plaint. The plaintiff appellants further prayed for a declaration that the vendor defendant respondent No.1 has no right and authority to dispose of their HUF property and for grant of permanent injunction restraining the defendant respondents from raising any construction or making any addition and alteration in the suit property.

The defendant respondent filed a joint written statement wherein it was admitted that the suit property was originally HUF property but inter alia it was pleaded that it was partitioned on 12.5.1955 i.e. 27 years prior to filing of the suit and as per the partition, the disputed property had come to the share of defendant respondent No.1. On this premises it was mentioned that the sale by defendant respondent No.1 in favour of defendant respondents No.2 and 3 was legal and un-assailable.

On the basis of the pleadings of the parties, the trial court framed as many as 8 issues.

Seven witnesses were examined from the side of the

plaintiff appellants while five witnesses were examined from the side of the respondents. Both the sides also exhibited some documents.

Learned trial court after recording the evidence of the parties and hearing both the sides decided issue Nos. 2,5 and 6 against the plaintiff appellants and thus, dismissed the suit vide impugned judgment and decreed dated 10th August,1989.

Feeling aggrieved of the impugned judgment and decree dismissing the suit, the plaintiff appellants have filed the instant appeal.

Learned counsel for the plaintiff appellants submitted that the learned trial court has erroneously decided issue Nos.1,2,5,6 and 7 against the plaintiffs relying upon the unregistered documents Ex.A.1 and Ex.A.2 the alleged partition deeds. Counsel also contended that the trial court has not properly appreciated and evaluated the oral evidence, from which it is clear that the plaintiff appellants have been able to prove their case.

After hearing learned counsel for the appellant, I have gone through the impugned judgment and the material

available on record.

Before considering the findings of the learned trial court on issues Nos.2,5 and 6 it will be useful to have a look at these issues. Issue No.2 framed in the case is to this effect as to whether on 12.5.1955 partition of the property took place between plaintiff and respondent No.1 ? While issue No.5 is to this effect `whether the parties came into possession of their respective shares after the partition dated 12.5.1955 ? and the issue No.6 is to this effect as to `whether the plaintiffs are estopped from bringing the suit for declaration because of partition of the disputed property between the plaintiff and the defendant No.1 ?

In view of the fact that the defendant came with the case that the disputed property came in his share and possession by virtue of a family settlement, burden to prove issue No.2 lies upon the defendant. D.W.1 Birdhi Chand in his statement has stated that Pana Bai is his step mother while Mool Chand is his brother. His father Shri Niwas died in the year 1940. The property left by Shri Niwas was partitioned in between Mool Chand, Pana Bai and Birdhi Chand on 12.5.1955. Partition took place on asking by Mool Chand and the mother. One Pucca Bhandar and Tiwara

of the residential house came in the share of Mool Chand and two Kham houses out of three Kham Houses, came in his share while one Kham House came in the share of their mother Pana Bai. Nirala House, which was mortgaged with Seth Surajmal came in his share. Agricultural land measuring 12 Bigha, which was also under mortgage came in the share of Mool Chand. He has also stated about their shares in the agricultural lands. PW.1 Pana Bai has admitted the fact that the rooms of the house were partitioned between the parties 25 years ago after the death of her mother-inlaw and the partition deed was written by Master Shrinath. PW.2 Mool Chand in his statement has stated that the partition deed Ex.A.1 was written on 12.5.1955. He along with his mother signed the same. Three similar partition deeds were prepared and each of them were signed by the parties. After signing the document, he handed over the same to Birdhi Chand. Thus, it is clear that plaintiff Mool Chand has accepted the fact of writing of partition deed. DW.2 Shrinath in his statement has proved writing of partition deeds Ex.A.1 and A.2 and also proved the signatures of plaintiff Mool Chand and Pana Bai on the same. DW.4 Badri Lal, who was the witness of the documents, also proved the fact of writing of Ex.A.1 and A.2 and also the fact that the disputed house came in the share of defendant Birdhi Chand. Thus on the basis of the

evidence adduced by the parties it is clear that the plaintiffs have not been able to prove that no partition of the property in dispute took place while the defendant respondents have been able to prove this fact that the property of the HUF was partitioned between the members of the family on 12.5.1955.

Now the question to be considered by this court is as to whether the defendant has been able to prove that the property in dispute had come in his share and possession. To prove this fact the defendant Birdhi Chand has produced exchange deed Ex.A.3. In his statement Birdhi Chand has stated that on 4.3.1981 the property which came in his share and possession was exchanged with the property which came in the share of his mother through exchange deed Ex.A.3 which bears signature of Pana Bai. Pana Bai in her statement has admitted this fact. Defendant Birdhi Chand has also placed on record Exs.A.4, A.5 and A.6, the post-cards which were written by plaintiff Mool Chand to Birdhi Lal at his Indore address and has admitted his signatures on the same. In letter Ex.A.4 defendant Mool Chand has written that " सारा काम अलग है तो बुरी बातें सभी की मैं क्यों सुनूं। मकान

जमीनें जो चाहे बेचें खाते अलग-अलग होने चाहिए।" Therefore, on the basis

of the material and evidence produced by the defendant it can safely be concluded that the defendant has been able to prove this fact that the property in dispute came in his possession by virtue of exchange through exchange deed Ex.A.3.

In this view of the matter, the finding arrived at by the learned trial court being based on proper appreciation of evidence both ocular and documentary, cannot be interfered with and the impugned judgment deserves to be maintained.

Resultantly, the appeal fails and is, hereby, dismissed with no orders as to costs.

(K.C.Sharma), J.

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